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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

ANNETTE L. GERHARDT, AS
GUARDIAN AD LITEM FOR
HEATHER JO KRUEGER,
Petitioner,

v.

ESTATE OF ARLEN LEE MOORE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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QUESTION PRESENTED

Is a child denied equal protection of the laws and due process of law by a state court decision that bars her from seeking ongoing support from her natural father because her mother entered into a lump-sum child support settlement pursuant to a state statute that permitted such settlements only if the child is illegitimate?

PARTIES TO THE PROCEEDING IN THE WISCONSIN SUPREME COURT

The caption contains the names of all parties in the Wisconsin Supreme Court.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin is reported as *Gerhardt v. Moore*, 139 Wis. 2d 833, 407 N.W.2d 895 (1987) and is printed as Appendix A (App. 1a *et seq.*) hereto.[1] The case was certified to the Supreme Court of Wisconsin by the Court of Appeals of Wisconsin, whose unreported opinion is printed as Appendix B hereto (App. 12a *et seq.*). The unreported opinion of the Circuit Court for Sauk County, Wisconsin is Appendix C hereto (App. 17a *et seq.*).

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[1] "App." refers to the Appendix at the back of this petition.

JURISDICTION

The Wisconsin Supreme Court's judgment was entered on June 26, 1987. (App. 1a) A timely motion for reconsideration was denied on August 18, 1987. (App. 25a) By order of Justice John Paul Stevens, as Circuit Justice for the Seventh Circuit, petitioner was granted an extension of time to file this petition to and including December 31, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) (1982).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

WISCONSIN STATUTES § 52.28 (1967)

A woman who has borne a child out of wedlock or who is pregnant with a child which is likely to be born, out of wedlock, may enter into an agreement with the person claimed by her to be the father of the child. Such agreement may be entered into at any time prior to final judgment, either before or after issuance of process, or at any time while said judgment is still in effect. * * * The agreement shall include a determination of all facts and orders which § 52.37 requires the court to determine in its order for judgment, except that where the parties are unable to agree as to the paternity of the child, the alleged father may deny paternity in the agreement. By the terms of the agreement the defendant must submit personally to the jurisdiction of the court, and consent to entry of judgment in accordance with the

terms of the agreement. Upon motion of the district attorney, the judge of a court of record having power to enter final judgment in paternity proceedings, being satisfied with the terms of the agreement, shall order judgment in accordance therewith if paternity of the child is admitted. Where the paternity of the child is not admitted, after said agreement is approved by the court, it shall be filed but judgment shall not be rendered until there is a default of the payments agreed upon, when, upon motion of the district attorney, judgment shall be rendered and entered forthwith. All agreements referred to in §§ 52.21 to 52.45 shall be drawn by the district attorney. No other agreement or settlement of any paternity proceeding shall be valid.

STATEMENT OF THE CASE

Heather Jo Krueger was born out of wedlock on September 7, 1969. (App. 2a) Under Wisconsin law at that time and at all times to the present, parents have an obligation to maintain dependent children, so far as they are able. *See* Wis. Stat. § 52.01 (1967); Wis. Stat. § 767.25 (1981 & West Supp. 1987). At the time Heather Jo was born, county district attorneys were empowered to apply to the county courts for an order to compel such maintenance. Wis. Stat. § 52.01 (1967). Within months of Heather Jo's birth, the State of Wisconsin, through the District Attorney's Office for Dane County, Wisconsin, filed a complaint by Betty Lou Krueger, Heather Jo's mother, as complainant, seeking support from Arlen Lee Moore, Heather Jo's father. (App. 2a-3a)

Under Wisconsin law, a child support order was to "specify a sum which will be sufficient for the support of [the child], to be paid weekly or monthly, during a period fixed therein, or until the further order of the court." Wis. Stat. § 52.01(4) (1967). The Wisconsin statutes explicitly provided that such an order could be

modified: "Upon application of any party affected thereby and upon like notice and procedure, the court may modify such order." Wis. Stat. § 52.01(4) (1967).

Some Wisconsin statutes governing child support, however, applied only to children born out of wedlock. Section 52.28 of the Wisconsin Statutes provided that a woman who has borne a child out of wedlock may enter into an agreement to settle a paternity claim with the person claimed by her to be the father of the child. All agreements were required to be drawn by the district attorney, and the district attorney even was empowered to make an agreement "with the putative father * * * with the same force and effect as might be made by the mother" where the mother had been delivered of a child born out of wedlock who is likely to become a public charge. Wis. Stat. §§ 52.28, 52.29 (1967). No other agreement or settlement of any paternity proceeding, including any lump-sum settlement of a legitimate child's claim for child support, was valid under Wisconsin law. Wis. Stat. § 52.28 (1967).

In February 1970, when Heather Jo was just over six months old, an assistant district attorney for Dane County drew a settlement agreement by which Arlen Lee Moore admitted paternity, which he was not required to do under section 52.28. (App. 27a) Moore also agreed to pay Betty Lou Krueger $75 per month for 48 months for a total child support settlement of $3,600. (App. 27a) Moore further agreed to pay $1,000 to Sauk County, Wisconsin, for the lying-in expenses resulting from Heather Jo's birth. (App. 27a) The amount to be paid to Sauk County thus represented more than 25 per cent of the total support settlement to be paid to Betty Lou Krueger.

The agreement was approved by the Sauk County Corporation Counsel and a County Court Judge for Dane County. (App. 28a) No *guardian ad litem* was appointed or appeared on behalf of Heather Jo. (App. 3a)

Heather Jo's father made the payments required by the agreement, but provided no other funds for her support. (App. 3a-4a)

In 1979, the Wisconsin legislature repealed section 52.28 as part of a major revision of statutes governing actions affecting the family. The revised statutes became effective in 1981. In 1984, when Heather Jo was 15 years old, she filed a petition pursuant to those statutes with the Wisconsin Circuit Court for Sauk County for appointment of a *guardian ad litem* to pursue a claim against her father for her past, present and future support. (App. 29a) The court appointed Annette L. Gerhardt, an attorney, to act as Heather Jo's *guardian ad litem.* (App. 29a) Petitioner Gerhardt filed a Petition to Compel Support in November, 1984, alleging that Arlen Lee Moore is the natural father of Heather Jo Krueger and that he had not paid any amount for her support since November 1, 1974. (App. 30a-31a) Gerhardt sought an order requiring Moore to pay 17 per cent of his gross income for the past, present and future support of Heather Jo, to provide hospitalization and medical health insurance for her benefit and to pay 50 per cent of her uninsured medical expenses, and to maintain an appropriate policy of life insurance with Heather Jo as the irrevocable primary beneficiary. (App. 31a) On the date of the petition, the court entered an order requiring Moore to appear and show cause why a temporary support order should not be entered pending judgment and requiring Moore to provide financial information. (App. 32a-33a)

The petitioner filed financial information, in response to the same order. The filing showed that Betty Lou Krueger was supporting Heather Jo on a net monthly income of $756.55, with monthly expenses that exceeded that amount. (App. 36a) She also had debts for a car loan, medical expenses, and home improvements of over $5,000. (App. 37a)

Moore responded to the motion to compel support with an answer and motion to dismiss. (App. 4a) He argued that he reached a lump-sum settlement with Heather Jo and her mother, although the agreement named only Betty Lou Krueger, not Heather Jo, as a party along with Moore. (App. 4a) Moore claimed that the lump-sum settlement terminated his obligation to provide child support and that the doctrine of res judicata dictates that no further action could be taken to compel support. (App. 4a) The Circuit Court for Sauk County agreed and dismissed the complaint. (App. 23a) The court conceded that under current Wisconsin law, section 767.45, "Heather Jo has a right to bring this action of support against her father."[2] (App. 19a) The court concluded, however, that "[t]he concept of res judicata has long been a kingpin of Anglo Saxon law" and that Moore, "having fully complied with the law as it existed at the time the agreement was entered into, cannot now be sued by the child for yet more support." (App. 20a) Moore had provided no financial information and petitioner Gerhardt had been given no opportunity to make a record concerning the needs of the child or how the mother and child's financial circumstances had changed over the nearly 15 years since the lump-sum settlement was reached.

Petitioner Gerhardt appealed to the State of Wisconsin Court of Appeals for District IV. She argued that barring Heather Jo's right to claim child support on res judicata grounds, when she had not been represented in the prior proceedings, was improper under Wisconsin law and a violation of due process and equal protection because it denied Heather Jo a proceeding for child support

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[2] Section 767.45 provides in relevant part:

> (1) The following persons may bring an action for the purpose of determining the paternity of a child * * *:
>
> (a) The child.
>
> * * *

that is available to marital children.[3] The court of appeals concluded that the issues raised were "of statewide importance" and "could affect many other paternity settlements entered under the pre-1981 law." (App. 16a) It accordingly certified the case to the Wisconsin Supreme Court. (App. 16a)

The Supreme Court of Wisconsin affirmed the Circuit Court for Sauk County.[4] The court reviewed res judicata doctrine and held it applicable even though Heather Jo was not a party to the earlier proceeding. (App. 5a-10a) The court held that there is a relationship between Heather Jo and her mother such that Heather Jo was, in essence, represented. (App. 6a-7a) The court held that *whenever* a mother of a child born out of wedlock entered into a court-approved settlement with the father pursuant to Chapter 52, "the child's interests were virtually represented by the mother." (App. 7a) Although no factual record had been developed concerning the circumstances under which Betty Krueger signed the lump-sum settlement, the court concluded "that the custodial parent was best suited to understand and protect the needs of the child" and that "a custodial mother's interest and that of the child in a paternity proceeding are in many respects identical." (App. 7a) The court further took comfort in the participation of Sauk County in the settlement, and held that "the county's interest in the defendant father agreeing to provide the support, maintenance, and education of the child is parallel to that of the child," without regard for the fact that the county had a conflicting interest in recovering the mother's lying-in expenses. (App. 7a)

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[3] *Gerhardt v. Moore*, Appeal No. 85-0943, Brief of Appellant at 9-17 (July 29, 1985); (App. 15a).

[4] While the case was pending before the Supreme Court of Wisconsin, the Estate of Arlen Lee Moore was substituted as the defendant-respondent, upon Moore's death.

The Wisconsin Supreme Court rejected petitioner Gerhardt's equal protection claim in a single paragraph, without citation to this Court's cases regarding the constitutional protection afforded to illegitimates in actions for paternal support. (App. 11a) The court explained that the statutes under which the lump-sum settlement had been reached permitted settlements providing ongoing child support as an alternative to lump-sum settlements. (App. 11a) Since not all illegitimate children were barred from reopening child support awards, the court reasoned, the equal protection of the laws was not denied. (App. 11a) The court did not address the fact that *no* child of a marriage would be barred at the outset, as Heather Jo Krueger was barred, from seeking additional support.

REASONS FOR GRANTING THE PETITION

I. This Court Should Grant Certiorari Because the Wisconsin Supreme Court's Decision Giving Preclusive Effect to a Lump-Sum Settlement of a Father's Support Obligation that Could Be Entered Under Wisconsin Law Only Because the Child Is Illegitimate Is Contrary to Controlling Decisions of This Court on a Matter of Fundamental Importance.

A. *Barring Illegitimate Children from Seeking Child Support Because Their Mothers Entered into Lump-Sum Settlements that Were Permitted by Law Only for Illegitimate Children Violates the Equal Protection of the Laws Guaranteed by the Fourteenth Amendment.*

The long-settled statutory and common law of Wisconsin establishes that minor children born both in and out of wedlock[5] are owed an ongoing duty of support from their parents. *See In re the Paternity of R.W.L.*, 116 Wis. 2d 150, 157, 341 N.W.2d 682, 685 (1984); *Krause*

[5] For purposes of this Petition, the terms "born out of wedlock" and "illegitimate" are used interchangeably.

v. Krause, 58 Wis. 2d 499, 507, 206 N.W.2d 589, 594 (1973); *Niesen v. Niesen*, 38 Wis. 2d 599, 602, 157 N.W.2d 660, 662 (1968); *State v. Freiberg*, 35 Wis. 2d 480, 486, 151 N.W.2d 1, 4 (1967); *State v. Beilke*, 146 Wis. 515, 131 N.W. 891 (1911). Once a Wisconsin court has entered a settlement decree or order for the custody or support of a legitimate child of divorced or separated parents, the doctrine of res judicata will not bar reconsideration of that order or decree. *See, e.g., Krause*, 58 Wis. 2d at 508, 206 N.W.2d at 594; *Foregger v. Foregger*, 48 Wis. 2d 512, 522, 180 N.W.2d 578, 583 (1970); *King v. King*, 25 Wis. 2d 550, 553-54, 131 N.W.2d 357, 359-60 (1964). *See also* Wis. Stat. § 767.25(1m) (West Supp. 1987). Yet in this case, the Wisconsin Supreme Court cut off completely any opportunity for an illegitimate child to obtain a support decree solely because her mother entered into a lump-sum settlement pursuant to the now superseded section 52.28 of the Wisconsin Code. No legitimate child is barred in this manner. The Wisconsin Supreme Court's reading of section 52.28 is contrary to controlling decisions of this Court because it does not withstand the scrutiny this Court has afforded similar classifications based on illegitimacy that cut off access to procedures for obtaining child support.

The unanimous Court declared, in *Gomez v. Perez*, 409 U.S. 535, 538 (1973), that "a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally," and applied this principle directly to the right to obtain child support: "[O]nce a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother." *Id.*

Following *Gomez*, this Court expressly held that claim preclusion mechanisms similar to res judicata—short

statutes of limitations for paternity suits—cannot be used by states to bar illegitimate children permanently from obtaining support from their fathers where legitimate children are not similarly barred because such statutes are not substantially related to a legitimate state interest. *See Mills v. Habluetzel*, 456 U.S. 91 (1982); *Pickett v. Brown*, 462 U.S. 1 (1983). In *Mills*, the Court struck down a Texas law that imposed a one-year statute of limitations on paternity actions. The Court held that such state-imposed restrictions on the availability of a child support action to illegitimates must be substantially related to a legitimate state interest in order to survive scrutiny under the equal protection clause. *Mills*, 456 U.S. at 98-99. *Accord, Lalli v. Lalli*, 439 U.S. 259, 265 (1978). Under the Texas statute, failure to bring suit on behalf of illegitimate children within their first year of life resulted in their " 'being forever barred from the right to sue their natural father for child support, a limitation their legitimate counterparts do not share.' " *Mills*, 456 U.S. at 95 (quoting *In re Miller*, 605 S.W.2d 332, 334 (Tex. Civ. App. 1980)). The Court recognized that support suits brought by illegitimate children have the complication of requiring proof of paternity. *Mills*, 456 U.S. at 97-98. It explained that the need to prove paternity could justify some differences between the statutes governing support claims by legitimate and illegitimate children. *Id.* But the Court concluded that a one-year "window" in which to bring such claims created a support right for illegitimates that was merely illusory, and not supported by the state's interest in avoiding stale or fraudulent claims. *Id.* at 97. The Court declared that "[i]t would hardly satisfy the demands of equal protection and the holding of *Gomez* to remove an 'impenetrable barrier' to support, only to replace it with an opportunity so truncated that few could utilize it effectively." *Id.*

The Court reached the same result in *Pickett*, and struck down a two-year statute of limitations in Tennes-

see as a violation of equal protection. The Court again tested the statute by its substantial relationship to a legitimate state interest, and reasoned that a two-year statute of limitations was only a small improvement over a one-year limitation period. The Court concluded that the two-year statute also amounted to a restriction that effectively extinguished the support rights of illegitimate children. *Pickett*, 462 U.S. at 13.

The Wisconsin Supreme Court has used res judicata to "truncate" the right of illegitimate children in Wisconsin to support, like the state legislatures used the statutes of limitations in *Mills* and *Pickett*. Under the Wisconsin court's holding, there has never been a time since her mother's agreement, nor will a time ever come, when Heather Jo can seek the support she needs, despite the patent inadequacy of the original award to her mother.[6] The original lump sum is analogous to the short window for filing a paternity suit in *Mills* and *Pickett*; it presents a small, but inadequate, opportunity to obtain the support necessary for the child for years into the future. And, as in *Mills* and *Pickett*, no legitimate child is limited to such a truncated opportunity to seek support.

The Wisconsin Supreme Court's rationale for barring illegitimates whose mothers entered into settlements, even though legitimate children could not be so barred, was to protect the res judicata effect of the settlements. (App. 5a, 10a-11a) The primary purpose of res judicata is to preserve the finality of judgments and to avoid relitigation of claims that already have been adjudicated. *In re Estate of Radocay*, 30 Wis. 2d 671, 673, 142 N.W.2d 224, 226 (1966). The doctrine is not applied to child

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[6] *See In re the Paternity of B.W.S.*, 131 Wis. 2d 301, 314, 388 N.W.2d 615, 621 (1986), in which the Supreme Court of Wisconsin held, applying Michigan law, that a child support payment of $3,000 was inadequate as a matter of law. Betty Lou Krueger's settlement of $3,600 similarly fails to reflect an adequate and reasonable level of support from a father for the life of a child to adulthood.

support cases under Wisconsin law precisely because the rights of the child and the public's interest in the child's welfare are of higher priority. *See King v. King*, 25 Wis. 2d 550, 553, 131 N.W.2d 357, 359 (1964). In such cases, the Wisconsin courts have continuing jurisdiction, *id.*, and the controlling consideration is the welfare of the child. *See Krause*, 58 Wis. 2d at 513, 206 N.W.2d at 597.

Under the Court's precedents, preserving the finality of judgments in child support cases does not take precedence over the fundamental state interest in protecting the welfare of children and the equal protection of the laws to which illegitimate children are entitled.[7] Nor does the father's interest in repose outweigh the child's interest in an appropriate level of support. The Court has stated repeatedly that "problems [with respect to proof of paternity] are not to be lightly brushed aside, but neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination." *Gomez*, 409 U.S. at 538. *Accord*, *Mills*, 456 U.S. at 97; *Pickett*, 462 U.S. at 9. Here, res judicata was used as a bar to preclude any child whose mother entered into a lump-sum settlement from even attempting to prove paternity. This is a much more drastic bar than is justified by the difficulty of proof in paternity cases. In this case, the father actually admitted paternity in the lump-sum agreement, which was an admission not required by statute. In other cases, the difficulty of proof " 'is substan-

[7] The doctrine of res judicata acts as a claim preclusion mechanism; it brings issues to a final close. It is not a constitutional requirement, nor can it be applied mechanically to deny the equal protection required by the Constitution: "[R]es Judicata, as the embodiment of a public policy, must, at times, be weighed against competing interests, and must, on occasion, yield to other policies." *Spilker v. Hankin*, 188 F.2d 35, 39 (D.C. Cir. 1951). This Court has recognized that where sufficiently strong policy considerations —even short of constitutional protections—oppose the application of res judicata, the doctrine is not applicable. *E.g.*, *Kalb v. Feuerstein*, 308 U.S. 433 (1940).

tially alleviated by recent scientific developments in blood testing dramatically reducing the possibility that a defendant will be falsely accused of being the illegitimate child's father.' " *Pickett*, 462 U.S. at 11 (quoting *Mills*, 456 U.S. at 104 n.2 (O'Connor, J., concurring)). *See also Little v. Streater*, 452 U.S. 1, 6-8 (1981). This Court also observed in *Pickett* that the state's interest in preventing the problems surrounding proof of paternity, such as avoiding stale or fraudulent claims, is undermined by the " 'countervailing state interest in ensuring that genuine claims for child support are satisfied.' " *Pickett*, 462 U.S. at 10 (quoting *Mills*, 456 U.S. at 103 (O'Connor, J., concurring)). Satisfaction of child support claims is obviously beneficial for children, but also may reduce the number of individuals forced to seek welfare assistance. *Id.*

Moreover, the interest in repose and in avoiding stale or fraudulent claims is undercut by the fact that Heather Jo could have brought this action if the State of Wisconsin and her mother had never brought the original suit, or if the settlement or judgment in that suit had been for periodic payments, rather than a lump sum. (App. 11a) Yet proceedings after a lump-sum settlement are no more open to fraud than proceedings initiated for the first time years after a child's birth. It is difficult to see how the Wisconsin courts would be burdened by giving children like Heather Jo Krueger an opportunity to open child support claims and, if necessary, prove paternity.[8] Wisconsin courts routinely re-

[8] Wisconsin's current statutory procedure for litigating paternity claims is designed to be fair to all parties. The statutes provide for pretrial paternity proceedings, limit the type of evidence and testimony that may be offered, and allow for blood testing and expert witnesses as a method for proving paternity. *See* Wis. Stat. §§ 767.46, 767.47, 767.475, and 767.48 (1981 & West Supp. 1987). In addition to these Wisconsin procedures, federal legislation now permits the federal government to aid states in setting up procedures for establishing paternity. *See* 42 U.S.C. §§ 651-667 (1982 &

open child support judgments, even if based on a settlement agreement, for legitimate children under the current statutory scheme.[9] As in *Pickett*, the availability of a means to provide an appropriate level of paternal support for legitimate and illegitimate children whose mothers received child support awards or settlements calling for ongoing payments rather than lump-sum settlements is powerful evidence that the res judicata bar is not necessary to protect any state interest in preventing stale claims. *Pickett*, 462 U.S. at 14-15.

Petitioner seeks only the opportunity to obtain ongoing support that responds to the needs of the child involved.[10] That opportunity is available on a procedurally fair basis to all legitimate children in Wisconsin, but is denied totally to illegitimate children whose mothers accepted

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Supp. III 1985). To receive federal aid for enforcing state child support decrees, a State must set up procedures permitting "the establishment of the paternity of *any* child at any time prior to such child's eighteenth birthday." 42 U.S.C. § 666(a)(5) (Supp. III 1985) (emphasis added).

In addition, once a child support matter is initiated or reopened in Wisconsin, the court must take into consideration each parent's overall circumstances, so, for example, other children of a father would not be deprived of a proper level of support because of a support order for an illegitimate child. *See* Wis. Stat. § 767.25 (1)(b), (bz) (1981 & West Supp. 1987).

[9] Section 767.32(1) of the Wisconsin Code, as amended, provides that "[a]fter a judgment providing for child support under § 767.25, * * * the court may, from time to time, * * * revise and alter such judgment respecting the amount of such maintenance or child support and the payment thereof * * *." Wis. Stat. § 767.32(1) (1981 & West Supp. 1987).

[10] Petitioner thus does not seek to void lump-sum settlements entered under section 52.28. Nor does the Court have to reach a holding on the constitutionality of section 52.28. The only issue petitioner presents is whether the Wisconsin court's decision barring children *today* from seeking support because their mothers once accepted lump-sum settlements is a denial of equal protection and due process.

lump-sum settlements. That is a bar only illegitimate children can suffer. The Court should grant this Petition and reverse the Wisconsin Supreme Court because its interpretation of the Wisconsin legislature's classification based on illegitimacy contravenes controlling decisions of this Court protecting illegitimates under the equal protection clause of the Fourteenth Amendment from just such procedural barriers to a fair opportunity to seek paternal support.

B. *Precluding Modification of a Meager Lump-Sum Child Support Settlement Deprives the Child of Her Right To Seek and Obtain Paternal Financial Support Without Affording Her the Due Process Protections Mandated by the Fourteenth Amendment.*

The Wisconsin Supreme Court has held that "[i]mplicit in the Wisconsin statutes relating to paternity and financial support for children (whether born in or out of wedlock) is a recognition of the child's *judicially enforceable* right vis-a-vis the father to establish parentage and to obtain financial support." *In re the Paternity of R.W.L.*, 116 Wis. 2d 150, 158, 341 N.W.2d 682, 685 (1984) (emphasis added) (citing *J.M.S. v. Benson*, 98 Wis. 2d 406, 414, 415, 297 N.W.2d 18 (1980)). Under Wisconsin law, the "primary interest in the paternity action is that of the child." *In re the Paternity of R.W.L.*, 116 Wis. 2d at 158, 341 N.W. 2d at 685 (citing *Francken v. State*, 190 Wis. 424, 436, 209 N.W. 766, 772 (1926)). Despite its own prior holdings recognizing the child's legal entitlement, however, the Wisconsin Supreme Court's ruling in this case permanently denies any illegitimate child, on whose "behalf" a lump-sum agreement has been made, any opportunity to enforce his or her own right to paternal support, regardless of the obvious inadequacy of the agreement. This Court has held that such determinations cannot stand unless they meet the requirements of due process of law:

> [W]hen the judgment of a state court, ascribing to the judgment of another court the binding force and effect of *res judicata*, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in *both* litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes.

Hansberry v. Lee, 311 U.S. 32, 40 (1940) (emphasis added).

Heather Jo was not provided in the first litigation—between her mother and father—with an adequate forum in which to assert her right to child support. The Supreme Court of Wisconsin maintained that Heather Jo was "virtually" represented by her mother and Sauk County in that case. This Court's holdings on the procedures that must be made available to illegitimates seeking child support, however, make clear that the interests of mother and child under these circumstances are not always the same. The Court recognized in *Mills* that "[f]inancial difficulties caused by childbirth expenses or a birth-related loss of income, continuing affection for the child's father, a desire to avoid disapproval of family and community, or the emotional strain and confusion that often attend the birth of an illegitimate child all encumber a mother's filing of a paternity suit * * *." *Mills*, 456 U.S. at 100.[11] Justice O'Connor observed in concurrence that "[t]he possibility of * * * unwillingness to file suit" arising from such factors "underscores that the mother's and child's interests are not congruent * * *." *Mills*, 456 U.S. at 105 n.4 (O'Connor, J., concurring). These same factors could compel the mother of a newly born illegitimate child to settle for a small

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[11] *See also In re the Paternity of R.W.L.*, 116 Wis. 2d at 160-61, 341 N.W.2d at 686.

lump sum rather than enduring a trial to prove paternity.

The Wisconsin Supreme Court tried to explain away any concern about whether the interests of Heather Jo were adequately protected by noting that "the county's interest in the defendant father agreeing to provide the support, maintenance, and education of the child [was] parallel to that of the child." (App. 7a) This assertion fails to withstand even minimal scrutiny. The county's primary interest—demonstrated by the fact that it was paid nearly 25 per cent of the settlement amount—was in recovering the mother's lying-in expenses. The county's interest in settling to receive its lying-in expenses rather than running the risks of proving paternity is in direct conflict with that of the child.[12]

Despite the facts that Heather Jo's mother approached the settlement under difficult circumstances and the interests of the county were in conflict with those of Heather Jo, no *guardian ad litem* was appointed to represent her. Petitioner does not claim that due process requires a guardian to be appointed in every proceeding in which natural parents litigate or settle interests affecting the child. Here, however, a guardian has been appointed and is prepared to present facts concerning the interest of the child that were not heard in the proceeding between the parents. Due process does not permit the child to be barred at the outset in the proceeding brought by the guardian: "[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process

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[12] Furthermore, the county's interest in disposing of paternity cases expeditiously, by offering terms to which the father is likely to agree, conflicts with that of the child in seeking to prove paternity and obtain a more substantial and adequate agreement of support. *See In re the Paternity of R.W.L.*, 116 Wis. 2d at 161-62, 341 N.W.2d at 686.

must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). The Wisconsin Supreme Court decision giving preclusive effect to lump-sum settlements for child support of illegitimates fails to "fairly insure[] the protection of the interests of the absent part[y who is] to be bound * * *." *Hansberry v. Lee*, 311 U.S. at 42. This Court accordingly should review and reverse the Wisconsin Supreme Court decision.

II. This Court Should Grant Certiorari Because the Wisconsin Supreme Court's Holding Contributes to the Conflict Among the State Courts Concerning the Application of the Principles of Equal Protection and Due Process to the Support Rights of Illegitimate Children.

The Wisconsin Supreme Court decision adds to the conflict among various states concerning whether illegitimate children are entitled to support rights routinely provided to legitimate children. The opinion of the Wisconsin Supreme Court is one of a group of state court decisions that deny illegitimate children the opportunity to request judicial consideration of paternal support because a prior resolution of the support issue was reached in a proceeding to which the child was not a party.

Like the Wisconsin court, the Court of Appeals of New York, in *Bacon v. Bacon*, 46 N.Y.2d 477, 386 N.E.2d 1327, 414 N.Y.S.2d 307 (1979), upheld a state statute which gave judicially approved settlement agreements between the mother and the putative father of an illegitimate child preclusive effect as to all other support remedies, including modification, otherwise available to the child or mother. The court held that the statute did not "run[] afoul of the constitutional guarantee of equal protection of the laws." *Bacon*, 46 N.Y.2d at 479, 386 N.E.2d at 1328, 414 N.Y.S.2d at 307. Similarly, the New Jersey Supreme Court has held that, under the law of

Pennsylvania, a mother's agreement to release the father from any duty to pay child support bars her from later action on behalf of the child, and it cited authority that the agreement also binds the illegitimate child. *State ex rel. Acorman v. Pitner*, 42 N.J. 251, 254, 200 A.2d 104, 107 (1964).[13]

In contrast, other state courts have rejected the notion that an earlier resolution of the support issue between the parents restricts the rights of illegitimate children to obtain support on their own. The Georgia Supreme Court explicitly held in *Worthington v. Worthington*, 250 Ga. 730, 301 S.E.2d 44 (1983), that a mother's statutorily sanctioned release of all support obligations of the putative father in consideration of $10,000 did not waive the illegitimate child's right to seek support from the father. While the court eventually rested its decision on an interpretation of the applicable statute which limited the preclusive effect of a contract of support entered into in order to avoid legal action, the opinion began with the court's proclamation that on grounds of policy alone it "would not hesitate to find that the protection of the non-waiver doctrine [accorded the children of divorce seeking modification] should be extended to illegitimate children." *Worthington*, 250 Ga. at 731, 301 S.E.2d at 46.

The Colorado Supreme Court, in a case holding that a father of an illegitimate child had the right to seek

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[13] Other state courts have assumed the non-modifiability of child support for illegitimate children. The Alabama Supreme Court has suggested that a court-approved settlement agreement would preclude an illegitimate child's suit for support even though an unapproved agreement would not. *Kamp v. Morang*, 173 So. 2d 566 (Ala. 1965). Holdings of the Arizona Court of Appeals, the Oregon Court of Appeals, the California Court of Appeals and the Court of Appeals of Michigan carry the same implication. *See Bill By and Through Bill v. Gossett*, 132 Ariz. 518, 647 P.2d 649 (Ct. App. 1982); *Fox v. Hohenshelt*, 19 Or. App. 617, 528 P.2d 1376 (1974); *Everett v. Everett*, 57 Cal. App. 3d 65, 129 Cal. Rptr. 8 (1976); *Tuer v. Niedoliwka*, 92 Mich. App. 694, 285 N.W.2d 424 (1979).

modification of a jury verdict of support in spite of a state statute to the contrary, noted that giving permanent effect to a determination of support would also violate the child's right to equal protection. *Munn v. Munn*, 168 Colo. 176, 177, 450 P.2d 68, 69 (1969). In 1984, the Nebraska Supreme Court held that a showing of changed circumstances adequately supported modification of an order of support for an illegitimate child. *State ex rel. Toledo v. Bockmann*, 218 Neb. 420, 355 N.W.2d 521 (1984).[14]

Moreover, various state courts have declined to give preclusive effect, in later proceedings brought by or on behalf of an illegitimate child, to judgments in prior actions brought by another party. In *Gammon v. Cobb*, 335 So. 2d 261, 266-67 (Fla. 1976), the Florida Supreme Court stated that the mother of an illegitimate child could not contract away the child's right to support. The Ohio Supreme Court declined to give res judicata effect to a dismissal with prejudice of a paternity suit brought by the mother of an illegitimate child in *Johnson v. Norman*, 66 Ohio St.2d 186, 421 N.E.2d 124 (1981). The North Carolina Supreme Court held that an illegitimate child could bring a second paternity action despite a ruling in favor of the putative father in a prior suit brought by another party, since the child was not in privity with any party to the initial action. *Settle by and Through Sullivan v. Beasley*, 309 N.C. 616, 308 S.E.2d 288 (1983).[15]

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[14] Intermediate appellate courts in other states also have refused to preclude the modification of judicially sanctioned support decrees on behalf of illegitimate children. *See Ibanez v. Salazar*, 459 So. 2d 346 (Fla. Dist. Ct. App. 1984); *Kennerson v. Malveaux*, 457 So. 2d 251 (La. Ct. App. 1984); *People ex rel. Spicer v. Coleman*, 72 Ill. App. 3d 631, 391 N.E.2d 46 (1979).

[15] Intermediate state appellate courts also have recognized that the rights of the illegitimate child cannot be adequately protected if prior actions to which the child was not a party are given pre-

Thus, the state courts which have addressed the issue have rendered conflicting opinions on whether the Constitution mandates that a decision establishing responsibility for the financial support of an illegitimate child, to which the child was not a party, must be modifiable as are such decisions concerning legitimate children. The importance of resolution of this issue by this Court can hardly be overstated. In the states that hold that child support awards to illegitimates are not modifiable, thousands of children, like Heather Jo Krueger, are denied the right to support that is guaranteed to their legitimate counterparts. The burden that this puts on their mothers or others who have custody, and the states that often are called upon to support them through public assistance, warrants review by this Court.

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clusive effect as to the child. The Arizona Court of Appeals has held that a mother's statutorily sanctioned and approved compromise and settlement of a prior paternity action could not bar the child's right, by *guardian ad litem*, to establish parentage. *Backora v. Balkin*, 14 Ariz. App. 569, 485 P.2d 292 (1971). The court refused to "speculate," however, on whether the purpose of the suit was ultimately to seek support, and declined to address what estoppel effect the prior settlement might have on that issue. *Backora*, 14 Ariz. App. at 572, 485 P.2d at 295. The Minnesota Court of Appeals has similarly held that a stipulated agreement in a paternity proceeding did not preclude a later suit for modification. *Quaderer v. Forrest*, 387 N.W.2d 453 (Minn. Ct. App. 1986). Several state courts of appeals have refused to preclude a child's right of action on the grounds that the child was not in privity with any party to a prior action. *See, e.g., Dept. of Health and Rehabilitative Services, ex rel. Ward v. Wyatt*, 475 So. 2d 1332 (Fla. Dist. Ct. App. 1985); *In re Smith*, 16 Ohio App. 3d 75, 474 N.E.2d 632 (1984); *In re Burley*, 33 Wash. App. 629, 658 P.2d 8 (1983).

CONCLUSION

For all of the foregoing reasons, petitioner Annette L. Gerhardt respectfully seeks this Court's review of the decision of the Supreme Court of Wisconsin.

Respectfully submitted,

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APPENDIX

APPENDIX

STATE OF WISCONSIN
IN SUPREME COURT

No. 85-0943

ANNETTE L. GERHARDT, As Guardian ad Litem for
HEATHER JO KRUEGER,
Plaintiff-Appellant,

v.

ESTATE OF ARLEN L. MOORE,
Defendant-Respondent.

[Filed June 26, 1987]

APPEAL from an order of the Circuit Court for Sauk County: JAMES R. SEERING, Reserve Judge. *Affirmed.*

WILLIAM G. CALLOW, J. This is an appeal from an order of the circuit court for Sauk County, Judge James R. Seering presiding, dismissing the plaintiff's motion to compel support. This appeal is before us on certification by the court of appeals.

The court of appeals certified four issues to this court. The first of these issues, which we find dispositive of this appeal, was stated as follows:

> "Under *In re Paternity of R.W.L.*, 116 Wis. 2d 150, 341 N.W. 2d 682 (1984), is an agreement entered into in 1970 pursuant to ch. 52, Stats., 1967, by a nonmarital child's mother, father and the dis-

> trict attorney, whereby the father admitted paternity and agreed to pay a lump sum settlement of $4,600 for support and lying-in expenses incurred as a result of the child's birth, and which provided that it constituted full and final settlement of the action, *res judicata* as to an action for child support commenced by the child in 1984?"

Because we find the resolution of this issue dispositive, we do not reach the other issues which were certified.[1]

We must determine whether Heather Jo Krueger, a child born out of wedlock, may initiate a new paternity and support action against the alleged father, where, pursuant to Chapter 52, Stats. 1967, the child's mother and father, their respective attorneys, the District Attorney for Dane County, and the Sauk County Corporation Counsel had previously entered into a support agreement which was complied with fully and purported to constitute a full and final settlement of all support claims. Because we conclude that the prior paternity agreement bars the present action under res judicata, we affirm the order of the circuit court.

The facts are undisputed. On September 7, 1969, Heather Jo Krueger was born out of wedlock to Betty Lou Krueger, a resident of Sauk County. Sometime

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[1] The other issues certified to this court are as follows:

"If the agreement is not *res judicata* as to the child, does she have a cause of action against her father for child support? If so, must she establish paternity in her action, or can she rely on the admission of paternity in the 1970 agreement?

"If the child has a cause of action against her father for child support, may she maintain a common-law cause of action or is the action brought pursuant to sec. 767.25, Stats., and subject to sec. 767.25(5), which limits liability for past support to the period after commencement of the action?

"Does equal protection then require that marital children [will] also be able to bring actions for child support against noncustodial parents?"

thereafter, the state of Wisconsin, plaintiff, by Betty Lou Krueger, complainant, filed an action against Arlen L. Moore, a resident of Dane County, defendant, under Chapter 52, Stats. 1967, seeking to have Moore adjudicated the father of Heather Jo Krueger (Krueger) and seeking contribution for Krueger's support. On October 27, 1970, an agreement was entered into wherein Moore admitted paternity and agreed to pay a lump sum for support. The agreement was drafted and approved by a Dane County Assistant District Attorney, was signed by Krueger's mother, as complainant, Moore, as defendant, and their respective attorneys. The agreement was also approved by the Sauk County Corporation Counsel and Dane County Judge Mittelstadt. No guardian ad litem was appointed or appeared on behalf of Krueger. Findings and a judgment, based upon the agreement, were also signed by Judge Mittelstadt.

Under the settlement, the defendant agreed to pay a total of $4,600 over a period of time as a lump sum settlement for medical expenses paid by Sauk County as a result of Krueger's birth and for child support. Specifically, the settlement provided for the payment of $3,600 in child support to be paid at the rate of $75 per month for forty-eight months, and $1,000 for medical reimbursement to Sauk County to be paid at the rate of $20 per month for fifty months. Moreover, paragraph 9 of the agreement provided as follows:

> "That this agreement and full and complete performance thereof shall constitute full and final settlement of this action, pursuant to the provisions of Chapter 52, Wisconsin Statutes, 1967."

The defendant complied with the terms of the agreement and made all payments in a timely manner. Pursuant to the agreement, and in accordance with the statute in effect in 1970, the defendant's support obligation ended with his last payment which was made in late

1974. The defendant has made no further contributions to the support of Krueger.

On November 20, 1984, Krueger, by her guardian ad litem, commenced this action against Moore (defendant), now deceased, seeking past, present, and future support. The guardian ad litem requested that the defendant pay 17 percent of his gross income from November 1, 1974, for Krueger's past, present, and future support, that he provide medical insurance, pay 50 percent of her uninsured medical bills, and name her as an irrevocable primary beneficiary on a life insurance policy. Krueger also requested that a temporary order for support be made pursuant to sec. 767.23 (1), Stats. The defendant moved to dismiss the action on the ground that the petition raised issues which were previously adjudicated in their entirety; thus, the action was barred under the doctrine of res judicata.

The Sauk County Family Court Commissioner certified the motion for temporary support and the motion to dismiss to the circuit court for Sauk County. Following a hearing on the motions and the submission of briefs, the circuit court rendered a memorandum decision in which the court held that the doctrine of res judicata barred Krueger's action for support. According to the circuit court, because the defendant had complied fully with the law at the time the agreement was entered into, the defendant could not now be sued by the child for more support.

The circuit court distinguished this court's decision in *In re Paternity of R.W.L.*, 116 Wis. 2d 150, 341 N.W. 2d 682 (1984), in which we held that, because a district attorney does not represent the interests of an illegitimate child in deciding whether to bring a separate paternity action, an illegitimate child has a right to bring a separate paternity action on his or her own behalf. The circuit court concluded that the independent cause of

action recognized in *R.W.L.* was dependent upon the absence of a paternity determination. The circuit court stated that in *R.W.L.* a different result might have been reached if the issue of paternity had been completely resolved.

An order of dismissal was filed on May 13, 1985. Krueger appealed the order of dismissal to the court of appeals. On December 2, 1986, we accepted the court of appeals' certification of the appeal.

The issue on appeal involves a question of whether the doctrine of res judicata bars a support action by a child born out of wedlock where a prior settlement agreement, made pursuant to statutory direction, purporting to be a complete and final determination of paternity and support, has been entered into and complied with fully. The determination of whether the doctrine of res judicata applies is a question of law. *DePratt v. West Bend Mutual Insurance Co.*, 113 Wis. 2d 306, 310, 334 N.W. 2d 883 (1983). We, therefore, need not defer to the circuit court's determination. *Treiber v. Knoll*, 135 Wis. 2d 58, 64, 398 N.W. 2d 756 (1987).

Under the doctrine of res judicata, "a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings." *DePratt*, 113 Wis. 2d at 310. The purpose behind the doctrine of res judicata is to prevent multiple litigation involving the same cause of action or claim. Fairness to the defendant requires that at some point litigation over the particular controversy must come to an end. *Id.* at 311.

For an initial action to bar a subsequent action, there must be an identity of the parties or their privies and an identity of causes of action or claims in the two cases. *Id.; Leimert v. McCann*, 79 Wis. 2d 289, 294, 255 N.W. 2d 526 (1977). Here, we clearly have an iden-

tity of causes of action. Both the initial paternity proceeding brought in 1970 and this action are premised on the same set of underlying circumstances. Whether there exists an identity of the parties is not as clear. Although the defendant in both actions is identical, the plaintiff in this action, Krueger, was not an actual party in the first paternity action. Thus, whether Krueger is bound by the earlier agreement depends upon whether there was a relationship between Krueger and the parties to the agreement such that one of the parties would be considered to have represented her.

Much emphasis has been placed by Krueger on this court's recent decision in *R.W.L.* in which we held that an illegitimate child has a separate cause of action (separate from the district attorney) to bring a paternity action against the alleged father. 116 Wis. 2d at 162. Relying upon our conclusion that we had previously erred in holding that the legislature provided for the virtual representation of the child in the paternity determination through the district attorney, Krueger asserts that *R.W.L.* stands for the proposition that there is no relationship between the parties in a paternity action and the child which would cause the district attorney or the mother to be recognized as representing the child. Such a conclusion reads too broad a meaning into *R.W.L.* Our determination in *R.W.L.* was that the district attorney, *in deciding whether to initiate* a paternity action, did not represent the interests of the illegitimate child. We specifically declined to address the question of whether the mother may have substantially the same interests as the child and, therefore, was the child's representative in initiating a paternity action. We did not address the question of whether either the district attorney or the mother represents the interests of the child in a paternity action.

We are satisfied that, where a mother of a child born out of wedlock entered into a court approved settlement agreement with the alleged father, pursuant to Chapter

52, Stats. 1967, the child's interests were virtually represented by the mother. In the typical settlement proceeding under Chapter 52, it was the practice for the custodial parent to speak for the child. This practice recognized the fact that the custodial parent was best suited to understand and protect the needs of the child.

In addition, a custodial mother's interest and that of the child in a paternity proceeding are in many respects identical. Both have an interest in obtaining the father's assistance in providing for the child's support, maintenance, and education. The mother's interest in assistance from the father is very strong; any support that the father fails to provide becomes the responsibility of the mother. In this respect it can be seen that the mother's interest is more closely tied to the child than that of any other party or potential party.

We note that Sauk County's participation in the 1970 agreement provides further evidence that Krueger's interests were represented in the initial paternity action. The focus of a claim for support is providing support sufficient to meet the needs of that child. Although primary responsibility rests with the parents, in the absence of adequate support from either or both parents, it is the obligation of the county in which the child resides to support the child. Because of this residual obligation, the county's interest in the defendant father agreeing to provide the support, maintenance, and education of the child is parallel to that of the child.

The 1970 statutory procedures recognized that there were three possible parties who were obligated, in concert, to provide adequate support for a child born out of wedlock.[2] The child's interest in receiving support, however,

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[2] Section 52.24, Stats. 1967, in providing that the district attorney may bring a paternity action if the child is or is likely to become a public charge, recognizes the county's potential obligation to support the child.

was not in which party provided support, but only that adequate support was provided. Where the parties agreed to what extent any one party would provide support, with the balance of the obligation falling upon the other parties, and that agreement receives court approval, then the child's interest has been adequately protected pursuant to the statute.

Moreover, the statutory procedure for entering into a paternity settlement was designed to protect not only the public interest but also the illegitimate child. *See Smazal v. Estate of Dassow*, 23 Wis. 2d 336, 340, 127 N.W. 2d 234 (1964). Chapter 52, Stats. 1967, provides for the prosecution of a paternity action by the district attorney if private counsel is not retained, the drafting of all agreements by the district attorney, and approval by the court. Compliance with these provisions guarantees legal representation of the mother and protects against a settlement which is not in the best interests of the child.

Krueger, however, argues that, even if she was represented in the prior proceeding, the representation was so inadequate as to constitute no representation. Relying upon sec. 52.37(2)(a) and (b), Stats. 1967, Krueger asserts that all settlements were to provide for the future support of the child until age eighteen. Krueger thus argues that, because the judgment requiring payment of a total of $3,600 toward Krueger's support is "inadequate to fulfill the directive of the statute that [Moore] be chargeable for the support of the child until the age of 18," any representation was so inadequate as to have been nonexistent. Accordingly, Krueger contends that she cannot be bound by the settlement. We disagree.

Implicit in the provision of a mechanism for a paternity settlement is the recognition that parties will accept a settlement which does not provide for the full support of the child until the age of eighteen. A settle-

ment, by its very nature, involves concessions by each party in an attempt to resolve the dispute without additional litigation. In reaching settlements, parties balance a number of competing interests, including the issue of paternity itself, the possibility of the father's absence by death or departure, the present financial position and the future income potential of the father, and present and future living expenses. Because many of these considerations are not predictable with any particularity, a lump sum settlement tends to be only an estimate which may, in hindsight, appear to be inadequate. However, where paternity is denied and the issue must go to trial, a settlement agreement may be a reasonable compromise.

We recognize that there could be compelling reasons to execute a settlement agreement, even though the amount of the settlement may appear to be low. It is important to understand that this settlement agreement was entered into in 1970. At that time, enforcement of a support award was often difficult. Moreover, the cost of living in 1970 was approximately one-third of what it is today. *See Consumer Price Index Detailed Report*, United States Department of Labor, Bureau of Labor Statistics (January, 1987). Although the settlement agreement in the present action appears, in hindsight, to be low, we are satisfied that it is not unconscionable.

We note that our recent decision in *In re Paternity of B.W.S.*, 131 Wis 2d 301, 388 N.W. 2d 615 (1986), is distinguishable from the present case. In *B.W.S.* we concluded that under Michigan law a settlement which provided for the deposit of $3,000 in trust for the benefit of the illegitimate child, with such money to be held until the child attained age eighteen, was inadequate as a matter of law. *Id.* at 314. We based this conclusion upon the fact that Michigan statutes and case law expressly provide that settlement agreements are binding only if the circuit court determines that the agreement makes adequate provision for the support and education

of the child. In reaching this conclusion, we quoted the following Michigan statute:

> "'An agreement or compromise made by the mother or child . . . concerning the support and education of the child shall be binding upon the mother and the child *only when the court having jurisdiction to compel support and education of the child shall have determined that adequate provision is reasonably secured by payment or otherwise* and has approved the agreement or compromise.
>
> "'(b) The performance of the agreement or compromise, when so approved, shall bar other remedies of the mother or child for the support and education of the child.' Section 722.713, Mich. Stats. (Emphasis added.)"

Id. at 310. In interpreting this section, we recognized that "[t]he key requirement for court approval of a settlement agreement under sec. 722.713, Mich. Stats., is that the circuit court determine that the agreement makes '. . . adequate provision for the support and education of the child. . . .'" *Id.* at 312. This 1970 Wisconsin paternity agreement, providing for the support of Krueger, is not subject to such a requirement.

Under sec. 52.28, Stats. 1967, a judgment shall be rendered upon a general agreement which considers all factors pertinent to fairness if the judge is "satisfied with the terms of the agreement." In addition, sec. 52.37, Stats. 1967, provides that the defendant father *shall* pay the lying-in expenses and the cost of the action while further providing that the defendant father is only *chargeable* for the future support of the child until the age of eighteen. The statutory provision that the defendant is merely chargeable recognizes that liability is limited to the terms of the agreement or, if no agreement, then to the amount fixed by the court.

Because we conclude that Betty Lou Krueger virtually represented Krueger's interest in the initial pa-

ternity proceeding, we hold that there exists an identity of the parties between the initial paternity proceeding and the proceeding initiated in this action. Having previously determined that there exists an identity of causes of action, we conclude that the 1970 paternity agreement, having been complied with fully, bars the action to compel support brought in this action. We note that this result is reached regardless of whether the present action was premised on a common law right to paternity, Chapter 767, Stats., or Chapter 52, Stats. 1967.

Krueger further argues that the paternity proceedings under Chapter 52 violate the principles of equal protection. According to Krueger, if we uphold the settlement agreement, we will in effect be creating a class of children, all illegitimate, who cannot seek additional support from their fathers, while legitimate children can. This contention is without merit. Children born out of wedlock (in the absence of a lump sum settlement), like those born in wedlock, may seek additional support from their father. *See* sec. 52.38, Stats. 1967; 36 Op. Att'y Gen. 222, 224 (1947): *State ex rel. Green v. Williams*, 49 Wis. 2d 752, 759, 183 N.W. 2d 37 (1971). Under sec. 52.38, paternity settlements are modifiable if they provide for periodic payments. While it is true that settlements which provide for a lump sum payment may not be modified, a lump sum settlement is merely one of two types of settlements available to provide for the support of children born out of wedlock. A child born out of wedlock is not denied equal protection simply because the statutes provide an additional, optional method for satisfying a support obligation.

By the Court:—The order of the circuit court is affirmed.

STATE OF WISCONSIN
IN COURT OF APPEALS
DISTRICT IV

No. 85-0943

ANNETTE L. GERHARDT, as Guardian
ad Litem for H.J.K.,
Plaintiff-Appellant,

v.

A.L.M.,
Defendant-Respondent.

[Filed Nov. 4, 1986]

CERTIFICATION BY COURT OF APPEALS OF
WISCONSIN

Before Dykman, Eich and Sundby, JJ.

ISSUES

(1) Under *In re Paternity of R.W.L.*, 116 Wis. 2d 150, 341 N.W.2d 682 (1984), is an agreement entered into in 1970 pursuant to ch. 52, Stats., 1967, by a non-marital child's mother, father and the district attorney, whereby the father admitted paternity and agreed to pay a lump sum settlement of $4,600 for support and lying-in expenses incurred as a result of the child's birth, and which provided that it constituted full and

final settlement of the action, *res judicata* as to an action for child support commenced by the child in 1984?

(2) If the agreement is not *res judicata* as to the child, does she have a cause of action against her father for child support? If so, must she establish paternity in her action, or can she rely on the admission of paternity in the 1970 agreement?

(3) If the child has a cause of action against her father for child support, may she maintain a common-law cause of action or is the action brought pursuant to sec. 767.25, Stats., and subject to sec. 767.25(5), which limits liability for past support to the period after commencement of the action?

(4) Does equal protection then require that marital children also be able to bring actions for child support against noncustodial parents?

FACTS

H.J.K. was born on September 7, 1969 to B.L.K., an unmarried woman. B.L.K. alleged that A.L.M. was the child's father. The district attorney commenced a paternity action against A.L.M. pursuant to ch. 52, Stats., 1967. The parties reached an agreement in February, 1970 whereby A.L.M. admitted to paternity, and agreed to contribute $3,600 for the child's support in payments of $75 per month for forty-eight months and to reimburse Sauk county $1,000 for medical expenses paid on behalf of B.L.K. The agreement provided that it constituted a full and final settlement of the action. It was approved by the trial court and entered as a judgment in October, 1970. A.L.M. made the required payments, which ended in late 1974.

H.J.K.'s guardian ad litem filed a "Petition to Compel Support" in November, 1984, alleging that A.L.M. was H.J.K.'s father and that he had not paid for her support

since November 1, 1974. She requested that A.L.M. pay seventeen percent of his gross income since November 1, 1974, for H.J.K.'s past, present, and future support, and that he provide medical insurance, pay fifty percent of her uninsured medical bills, and name her as an irrevocable primary beneficiary on a life insurance policy.

A.L.M. moved to dismiss on the ground that the 1970 agreement was *res judicata*. The trial court agreed and dismissed the petition. The guardian ad litem appeals from the dismissal order.

DISCUSSION

Chapter 52, Stats., before its 1981 amendments ("pre-1981 law") had been interpreted to provide that only the district attorney could commence an action to establish paternity and compel support for nonmarital children. *In re Paternity of R.W.L.*, 116 Wis.2d at 162, 341 N.W.2d at 687, held that the pre-1981 law did not provide the exclusive remedy or forum for a nonmarital child to establish paternity because the district attorney did not have substantially the same interests as the child and, therefore, could not be considered the child's representative in a paternity action. The guardian ad litem argues that the 1970 agreement cannot be *res judicata* as to H.J.K. since, under *R.W.L.*, she did not have substantially the same interests as the district attorney, and therefore, was not a party to the proceeding.

A.L.M. contends that *R.W.L.* should be distinguished because no prior determination of paternity and order of support had been made, unlike here. He argues that the district attorney represented the child's interest in entering the 1970 agreement. The guardian ad litem disagrees, noting that even if H.J.K. was represented in the prior proceeding, the representation was so inadequate as to be nonexistent.

The guardian ad litem also contends that the pre-1981 law violated H.J.K.'s right to equal protection by giving her a lesser right to support than marital children. Therefore, she contends the agreement entered into pursuant to that statute should not bar H.J.K.'s right to additional support. A.L.M. responds that there must be finality in the law, and that it is unfair and inequitable to proceed against him fifteen years after he thought his support obligation had been satisfied.

The guardian ad litem contends that, if the 1970 agreement does not bar the present action, H.J.K. should be able to rely on A.L.M.'s admission of paternity. She argues that A.L.M. should not be permitted to challenge the admission since he was fully represented in the prior proceeding. A.L.M. responds that H.J.K. should not be entitled to rely on the admission since he may not have admitted paternity in the prior proceeding if the admission had not been a condition for the lump sum settlement.

A.L.M. argues that sec. 767.45, Stats., which created a child's cause of action for paternity, cannot be applied to agreements made prior to July 1, 1981. The guardian ad litem responds that she is not attempting to reopen the 1970 agreement.

Although not briefed by the parties, this court questions whether the child may seek support retroactive to 1975, in light of sec. 767.25(5), Stats., which provides that "[l]iability for past support shall be limited to the period after commencement of the action." The guardian ad litem argues that the action was brought under both ch. 767 and as an independent action for support as allegedly recognized in *R.W.L.* She contends that the statutory prohibition against recovery of retroactive support does not apply to an independent action for support. If such an independent action exists, does equal protection require that it also be available for marital children?

If the child prevails, should the support be paid to her directly, or to her mother, in light of the fact that the child is still a minor? If the latter, is the mother the real party in interest, and would she then be bound by the 1970 agreement? If the child prevails, is she entitled to past support even though she has been supported? Is A.L.M. entitled to set off support furnished the child by others? Is she entitled to double support?

CONCLUSION

The proper application of *R.W.L.* to the facts of this case is an issue of statewide importance which could affect many other paternity settlements entered under the pre-1981 law. The supreme court should clarify which remedies are available to children should it conclude that they are not bound by such agreements. The court of appeals therefore certifies this case to the supreme court under Rule 809.61.

Dated this *4th* day of November, 1986.

Copies to: Annette L. Gerhardt
Conway, Conway & Gerhardt
121 Fifth Street
Baraboo, WI 53913

Gary Alan Hebl
Hebl & Hebl
1150 W. Main Street
Sun Prairie, WI 53590

STATE OF WISCONSIN
CIRCUIT COURT
SAUK COUNTY

Branch 2

Case No. 84-CV-574

ANNETTE L. GERHARDT, as Guardian ad litem for HEATHER JO KRUEGER,

Petitioner,

vs.

ARLEN LEE MOORE,

Respondent.

MEMORANDUM DECISION

This matter is presently before the Court on the respondent's motion to dismiss the petition of the petitioner with prejudice.

FACTS

The facts are simple and undisputed. They are as follows: On February 7, 1969, Betty Lou Krueger, gave birth to a female child named Heather Jo Krueger. Betty Lou Krueger charged Arlen Lee Moore, the respondent in this action, with being the father of the child.

At the time Heather Jo was born, the respondent, Arlen Lee Moore and Betty Lou Krueger were not married. Subsequent to the birth of Heather Jo and sometime in February of 1970, Betty Lou Krueger and Arlen Lee Moore and their respective attorneys entered into an agreement whereby the respondent, Arlen Lee Moore, agreed to pay the total sum of $4,600.00 over a period

of time as a lump sum settlement for support and lying-in expenses incurred as a result of the birth of Heather Jo. This agreement was drafted and approved by the Assistant District Attorney for Dane County, Wisconsin. It was approved by the Corporation Counsel of Sauk County and approved by Russell J. Mittelstadt, Judge, Dane County, Wisconsin.

It is apparently conceded that the respondent fully and completely abided by the agreement. It should be noted that, as a condition of this agreement, the respondent, Arlen Lee Moore, admitted that he was the father of Heather Jo.

Paragraph 9 of the agreement provides as follows:

> "That this agreement and full and complete performance thereof shall constitute full and final settlement of this action, pursuant to the provisions of Chapter 52, Wisconsin Statutes 1967."

In accordance with this agreement, findings and judgment were entered.

The instant action has been brought by Annette L. Gerhardt, Guardian ad litem for Heather Jo Krueger, petitioner, asking this Court to enter an order requiring Arlen Lee Moore to pay support for Heather.

As indicated at the outset, the respondent has filed this motion to dismiss on the grounds that the instant action is barred by the agreement entered into by Betty Lou and Arlen in 1970.

DECISION

In the Court's view, this is a matter of first impression in the State of Wisconsin. Up until 1981, illegitimacy proceedings were covered by Chapter 52 of the Wisconsin Statutes. Commencing in 1981, Section 767.45 Wisconsin Statutes and subsequent sections established a new procedure for determining paternity. Clearly, un-

der the new Section 767.45, Heather Jo has a right to bring this action of support against her father. The Court notes that, under Section 767.45, according to Wisconsin Statutes Annotated, there is the following notation:

> Applicability. L.1979, c. 352, Paragraph 40 provides:
>
> "This act applies to all paternity proceedings commenced after the effective date of this act. This act applies to all paternity proceedings commenced but not reduced to judgment or concluded prior to the effective date of this act. However, this act does not apply to paternity judgments or to any motion concerning paternity judgments or any paternity proceeding otherwise completed prior to the effective date of this act, except for motions to modify child support."

The question presented is, does Section 767.45 have retroactive application? At the time the agreement and judgment were entered into by the respondent, he fully and completely complied with the statutes as they then existed. Similarly, at the time this agreement was entered into, the decisions by the Wisconsin Supreme Court upheld the constitutionality of the procedures set forth in Chapter 52. See *J.M.S v. Benson*, 98 Wis. 2d 406 (1980).

It would appear from the face of the agreement that the respondent was represented by counsel, was reliably advised that the Assistant District Attorney and Corporation Counsel of Sauk County and a Dane County Judge would approve the agreement, and did enter into the agreement.

The Wisconsin Supreme Court *In Re: Paternity of R.W.L.* 116 Wis. 2d 150 overruled *Benson* and held that the procedure for determining paternity prior to the

1981 statute was unconstitutional, and that prior to the 1981 statute the child was entitled to bring an independent action for support. If *R.W.L.* is to be given retroactive effect, it would be difficult to determine whether or not there were any valid illegitimacy agreements prior to 1981.

The Supreme Court, in deciding the case of *R.W.L.*, made no references to the note cited earlier as to the effective date of Section 767.45 of the Wisconsin Statutes. It should further be noted that in the case of *R.W.L.* there was never any determination of paternity, because the case was dismissed on the ground it was barred by the statute of limitations. In *R.W.L.*, the Court held there was no statute of limitations, because the child had an independent cause of action which existed prior to 1981.

Thus, this Court is presented with a situation where the respondent has fully and completely complied with the law, as provided by the statute and as interpreted by the Supreme Court. Should he now be subjected to another claim for support for this child?

The concept of res judicata has long been a kingpin of Anglo Saxon law. Therefore, this Court is going to hold in this case that the respondent, having fully complied with the law as it existed at the time the agreement was entered into, cannot now be sued by the child for yet more support. It would appear that, in *R.W.L.*, the Supreme Court did not deal with this particular situation. This Court frankly believes that if, in *R.W.L.*, the issue of paternity had been completely resolved, a different result might have been obtained. The Court is, therefore, going to grant the respondent's motion to dismiss, with prejudice. *R.W.L*, in this Court's opinion, must be limited to its facts.

In closing, the Court would point out that the petitioner in this case is happy to accept respondent's ad-

mission of paternity and the money that he has paid as a result of that admission. If the statute is unconstitutional for all purposes, as the petitioner contends, it would seem to the Court that the admission of paternity, having been made presumably to obtain the advantage of a lump sum settlement, would have to be vacated. It would likewise seem that any and all monies paid by the respondent to Heather's mother would have to be returned to the respondent, with interest, and then this proceeding could commence. The Court cannot conceive that the Supreme Court contemplated that such a situation should develop.

The Court will concede that there is language in *R.W.L.* which would support the petitioner's position, but would point out that that language must be taken in the context of the factual situation presented in *R.W.L.*

In conclusion, this Court is satisfied that if petitioner's contentions are correct in regard to interpretation of *R.W.L.*, it cannot perceive how any attorney could advise any client, in any area, with any degree of certainty. When a competent attorney examines statutory law, and examines decisions of the Supreme Court, interpreting that law, there is little more an attorney can do. If this standard approach is insufficient, no attorney could meaningfully advise any client. Finality is not only a virtue, but a necessity. Changes in the law can certainly be made, but not at the price of invalidating fully consummated contracts.

The Court, in this decision, is not insensitive to the needs of the minor child. This Court firmly believes that parents should support their children. However, if res judicata is to have any meaning whatsoever, it must have meaning in a case such as this.

Respondent's counsel will be directed to draft an order of dismissal, submit it to opposing counsel for approval

as to form, and then to the Court, within two weeks of this date.

Dated this 25th day of April, 1985.

BY THE COURT:

/s/ J. R. Seering
J. R. SEERING
Circuit Judge

STATE OF WISCONSIN
CIRCUIT COURT
SAUK COUNTY

Case No.: 84 CV 574

ANNETTE L. GERHARDT, as Guardian ad Litem for
HEATHER JO KRUEGER,
Plaintiff,

vs.

ARLEN LEE MOORE,
Defendant.

ORDER OF DISMISSAL

WHEREAS, this instant action was commenced by the filing of a Summons and Complaint in Sauk County Circuit Court on November 20, 1984 and the subsequent personal service upon the defendant-respondent, Arlen Lee Moore on November 26, 1984; and

WHEREAS, the defendant-respondent, by and through his attorneys, HEBL, HEBL, HEBL & DESMOND-HEBL, made a motion to this Court for Dismissal of the instant action, said motion having been made on or about December 17, 1984; and

WHEREAS, the plaintiff-petitioner, by and through her Guardian ad Litem, Annette L. Gerhardt, presented the Court with an Order to Show Cause for Temporary Order; and

WHEREAS, a hearing was held on the Motion to Dismiss and on the Motion for Temporary Order by the Court on March 1, 1985; and

WHEREAS, the Court asked for and was presented with Briefs in support of the Motion and in opposition to the motion; and

WHEREAS, the Court has made and entered its MEMORANDUM DECISION, dated April 25, 1985, wherein it finds that the Defendant-Respondent is entitled to Dismissal of the pending action and wherein the court has directed that "Respondent's" counsel is directed to draft an order of dismissal,

NOW, THEREFORE, Upon motion by Gary Alan Hebl, attorney for the Defendant-Respondent, and upon the MEMORANDUM DECISION, and upon the entire record and file herein,

IT IS ORDERED:

That the above and foregoing action be and is hereby dismissed with prejudice.

Dated at Baraboo, Wisconsin, this 9th day of May, 1985.

BY THE COURT:

/s/ J. R. Seering
J. R. SEERING
Circuit Judge

APPROVED AS TO FORM:

/s/ Annette L. Gerhardt
Attorney at Law
for Plaintiff-Petitioner

SUPREME COURT
OF WISCONSIN
P.O. Box 1688
Madison, WI 53701-1688

Telephone (608) 266-1880

MARILYN L. GRAVES
Clerk

August 18, 1987

To: ANNETTE L. GERHARDT
CONWAY, CONWAY & GERHARDT
121 5th St.
Baraboo, WI 53913

GARY A. HEBL
HEBL & HEBL
1150 W. Main St.
Sun Prairie, WI 53590

The Court today announced an order in your case as follows:

District 4
Gerhardt v. Moore, 85-0943

Motion for Reconsideration denied, with costs.

Day, J. did not participate.

MARILYN L. GRAVES
Clerk of Supreme Court

STATE OF WISCONSIN
COUNTY COURT
DANE COUNTY
BRANCH II

STATE OF WISCONSIN,
Plaintiff

by BETTY LOU KRUEGER,
Complainant,

vs.

ARLEN LEE MOORE,
Defendant.

AGREEMENT

WHEREAS, the above named complainant, Betty Lou Krueger, an adult, has given birth to a female child, out of wedlock, at Madison, Wisconsin; and

WHEREAS, the complainant alleges that the above named Arlen Lee Moore, an adult, herein designated as the defendant, is the father of said child, this agreement entered into by and between the parties and their respective attorneys, Ted C. Boyle, on behalf of the complainant and William Bradford Smith, on behalf of the defendant, and said parties appearing personally;

IT IS AGREED

1. That the complainant and the defendant both submit personally to the jurisdiction of the County Court, Branch II, for Dane County, Wisconsin;

2. That the complainant and the defendant have never intermarried;

3. That on the 7th day of September, 1969, the complainant gave birth out of wedlock, to a female child, since named Heather Jo Krueger; that said child is alive; that the defendant is a resident of Dane County, Wisconsin;

4. That the complainant alleges that the defendant is the father of said child;

5. That the defendant admits that he is the father of said child;

6. That the defendant consents to entry of judgment in accordance with the terms of this agreement.

7. That the defendant agrees to contribute to the future support of and maintenance of said child in the following manner: The defendant will pay to the Clerk of County Court, Branch II, for Dane County, Wisconsin, the sum of $75.00 per month beginning on the [illegible] day of [illegible], 1970, and a like amount of $75.00 per month on the 1st day of each month thereafter for a period of 48 month making a total payment of $3,600.00. Defendant further agrees to pay to Sauk County, Wisconsin, the sum of $1,000.00 for medical reimbursement paid on behalf of the complainant at the rate of $20.00 per month for 50 months beginning December 1, 1970.

8. That the defendant will pay to the Clerk of County Court Branch II, all costs and disbursements of this action.

9. That this agreement and full and complete performance thereof shall constitute full and final settlement of this action, pursuant to the provisions of Chapter 52, Wisconsin Statutes 1967.

DRAFTED AND APPROVED BY:

/s/ [Illegible]
Assistant District Attorney
for Dane County, Wisconsin

In the presence of:

/s/ [Illegible]

/s/ [Illegible]

Signed:

/s/ [Illegible]
Complainant

/s/ [Illegible]
Defendant

/s/ [Illegible]
Complainant's Attorney

/s/ [Illegible]
Defendant's Attorney

This agreement is hereby approved and is ordered to be placed on file.

APPROVED BY:

/s/ Paul [Illegible]
Sauk County Corporation Counsel

/s/ Russell J. Mittelstadt
Judge
County Court, Branch
Dane County, Wisconsin

Signed and approved this [illegible] day of February, 1970.

STATE OF WISCONSIN
CIRCUIT COURT
SAUK COUNTY

IN THE MATTER OF THE APPOINTMENT
OF A GUARDIAN AD LITEM FOR
HEATHER JO KRUEGER, A MINOR.

ORDER APPOINTING GUARDIAN AD LITEM

On reading and filing the attached petition, and the attached affidavit of Annette L. Gerhardt, in which she consents to act as Guardian ad Litem for the above named minor, from all of which it satisfactorily appears that it is necessary that a Guardian ad Litem be appointed for Heather Jo Krueger, and that said Annette L. Gerhardt is a proper, competent and responsible person to act as such Guardian ad Litem, and the Court being fully advised in the premises.

IT IS ORDERED that Annette L. Gerhardt be, and she hereby is appointed Guardian ad Litem for said minor, and authorized to commence an action in behalf of said minor.

Dated this 20th day of November, 1984.

BY THE COURT:

/s/ R. F. Curtis
Acting Circuit Judge—Br. 2

STATE OF WISCONSIN
CIRCUIT COURT
SAUK COUNTY

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84 CV574

ANNETTE L. GERHARDT, AS
GUARDIAN AD LITEM FOR
HEATHER JO KRUEGER,
Petitioner,

vs.

ARLEN LEE MOORE.
Respondent.

[Filed Nov. 20, 1984]

PETITION TO COMPEL SUPPORT

1. The petitioner, Annette L. Gerhardt, maintains law offices, Conway, Conway & Gerhardt, S.C., at 121 Fifth Street, Baraboo, WI., and is the Guardian ad Litem for Heather Jo Krueger, born September 7, 1969, who currently resides at 115 Ninth Avenue, in the City of Baraboo, County of Sauk, Wisconsin 53913; she is by occupation a student and has Social Security Number 396-68-9163.

2. The respondent, Arlen Lee Moore, whose birthdate is September 7, 1949, currently resides at Route 2, Sun Prairie, County of Dane, Wisconsin. The respondent's occupation and Social Security number is unknown to the petitioner.

3. The respondent is the natural father of Heather Jo Krueger, pursuant to a Judgment dated October 27, 1970, and entered in Dane County, a certified copy of which is on file in Sauk County.

4. The respondent has not paid any amount for the support of Heather Jo Krueger since November 1, 1974.

PETITIONER REQUESTS AN ORDER:

1. Requiring the respondent to pay 17% of his gross income from November 1, 1974, for the past, present and future support of the minor child, Heather Jo Krueger.

2. Requiring the respondent to provide comprehensive hospitalization and medical health insurance for the benefit of said child, and requiring him to pay 50% of all uninsured hospital, medical, optical, dental, pharmaceutical and other like expenses for said child.

3. Requiring the respondent to maintain an appropriate policy of life insurance, with the said minor child named as the irrevocable primary beneficiary thereon.

Dated this 16 day of November, 1984.

CONWAY, CONWAY & GERHARDT, S.C.

/s/ Annette L. Gerhardt
ANNETTE L. GERHARDT

Office and Post Office Address:

CONWAY, CONWAY & GERHARDT, S.C.
121 Fifth Street
Baraboo, WI. 53913
(608) 356-9441

STATE OF WISCONSIN
CIRCUIT COURT
SAUK COUNTY

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84 CV574

ANNETTE L. GERHARDT, AS
GUARDIAN AD LITEM FOR
HEATHER JO KRUEGER,
Petitioner,

vs.

ARLEN LEE MOORE.
Respondent.

[Filed Nov. 20, 1984]

ORDER TO SHOW CAUSE FOR
TEMPORARY ORDER

Upon the attached Affidavit of the petitioner:

IT IS HEREBY ORDERED that the above-named respondent show cause in person before the Honorable John U. Dithmar, Family Court Commissioner for Sauk County, at his offices at 425 Oak Street, Baraboo, WI. on the 30th day of November, 1984, at 3:30 P.M. why an Order should not be entered pending judgment in this action for the relief requested in the attached Affidavit.

IT IS FURTHER ORDERED that pending the hearing on this order:

1. The petitioner shall produce financial information regarding Betty Lou Krueger, the natural mother of

Heather Jo Krueger, and the respondent shall also produce financial information, consisting of wage statements from the respective employers for a period of eight weeks prior to said hearing, a preliminary financial statement under oath, and copies of state and federal income tax returns for the last two taxable years.

2. A conformed copy of this order together with the supporting papers shall be served upon the respondent in person at least 48 hours before the time fixed for said hearing.

Dated at Baraboo, Wisconsin, this 20 day of November, 1984.

/s/ John U. Dithmar
Sauk County
Family Court Commissioner

STATE OF WISCONSIN
CIRCUIT COURT
SAUK COUNTY

ANNETTE L. GERHARDT, AS
GUARDIAN AD LITEM FOR
HEATHER JO KRUEGER,
Petitioner,

VS.

ARLEN LEE MOORE.
Respondent.

AFFIDAVIT

STATE OF WISCONSIN)
) ss.
COUNTY OF SAUK)

Annette L. Gerhardt, being first duly sworn on oath states as follows:

1. I am the petitioner in the above-entitled action, acting as Guardian ad Litem on behalf of Heather Jo Krueger, to compel support and I maintain law offices, Conway, Conway & Gerhardt, S.C., at 121 Fifth Street, Baraboo, WI. 53913, and said minor child, Heather Jo Krueger resides with her natural mother, Betty Lou Krueger, at 115 Ninth Avenue, Baraboo, Sauk County, Wisconsin.

2. Said minor child, Heather Jo Krueger, was born September 7, 1969.

3. The respondent is the natural father of said child.

4. Upon information and belief, the respondent has not paid any amount for the support of said minor child since November 1, 1974.

WHEREFORE, I request that a hearing be held and a temporary order be entered pursuant to the provisions of s. 767.23(1)(a), Wis. Stats., as follows:

1. Requiring the respondent to pay support for the minor child.

2. Requiring the respondent to maintain comprehensive hospitalization and medical health insurance for the benefit of said minor child, and requiring him to pay 50% of all uninsured hospital, medical, dental, optical, pharmaceutical and other like expenses for said minor child.

3. Requiring the respondent to maintain an appropriate policy of life insurance, with the minor child named as the irrevocable primary beneficiary thereon.

4. For such other and further relief as the Court or Family Court Commissioner deems just and reasonable in the circumstances.

/s/ Annette L. Gerhardt

Subscribed and sworn to before me
this 19 day of November, 1984.

/s/ SUSAN A. SPRECHER
Notary Public, Sauk County, Wisconsin.
My commission expires October 5, 1986.

No. 187 Temporary Hearing Fact Sheet
Revised 6-80 ATB Forms, LL Loan. Ed

Wisconsin Legal Blank Co., Inc.
Milwaukee, WI

State of Wisconsin : Family Court Branch : Sauk County

FAMILY COURT COMMISSIONER

Annette L. Gerhardt, Guardian
ad Litem for Heather Jo Krueger

(Petitioner) A Minor
~~(Joint Petitioners)~~

- vs

Arlen Lee Moore

(Respondent)

Case No. 84CV574

TEMPORARY HEARING
FACT SHEET

NOTE: THIS STATEMENT MUST BE FILED WITH THE FAMILY COURT COMMISSIONER BEFORE OR AT THE TIME OF THE HEARING. FAILURE BY EITHER PARTY TO COMPLETE, PRESENT, AND FILE THIS FORM AS REQUIRED WILL AUTHORIZE THE COURT OR HEARING OFFICER TO ACCEPT THE STATEMENT OF THE OTHER PARTY AS THE BASIS FOR ITS DECISION. ANY FALSE STATEMENT MADE HEREON SHALL SUBJECT YOU TO THE PENALTY FOR PERJURY AND MAY BE CONSIDERED A FRAUD UPON THE COURT

~~Husband~~:	Arlen Lee Moore	~~Wife~~:	Betty Krueger (Mother)
Address:	Route 2 Sun Prairie, WI	Address:	115 Ninth Avenue Barabob, WI 53913
Soc. Sec. No.:		Soc. Sec. No.:	396-68-9163
Birthdate:	_____ Age: _____	Birthdate:	_____ Age: _____
Employer:		Employer:	Weickgenant Accounting, Inc.
Occupation:		Occupation:	Receptionist
Attorney:	Gary Alan Hebl	Attorney:	Annette L. Gerhardt
Firm:	HEBL, HEBL & DESMOND	Firm:	CONWAY, CONWAY & GERHARDT, S. C.

Children:	Date of Birth:	Age:
Heather Jo Krueger	9/7/69	15

Date of Filing Summons: _____
Date of Service of Summons: _____
Date of Separation: _____
With whom are children living: _____

I. INCOME

(Attach copies of wage statements from your last four weeks earnings)

A. GROSS MONTHLY INCOME: (Multiply weekly income by 4.3 and bi-weekly income by 2.15)

Other: (AFDC, Social Security, Pensions, Disability, Unemployment, Interest, Dividends, Rents, Child Support from prior marriage, etc.) (Please circle source of income)

	Husband	Wife
		50.00
		860.00
TOTAL		910.00

B. DEDUCTIONS

Taxes		
Social Security		153.45
Insurance		
Union dues		
Retirement		
Credit Union		
Other		
TOTAL		153.45

C. NET MONTHLY INCOME

	756.55

II. MONTHLY EXPENSES

Rent or Mortgage (taxes and insurance) (if rent included)	188.50
Food	100.00
Utilities	100.00
Telephone	25.00
Clothing	50.00
Laundry Dryer's broken now	5.00
Medical (No health insurance)	25.00
Dental	20.00
Insurance (exclude payroll deductions) Life, auto	17.00
Child Care	- 0 -
Auto Expense	50.00
Auto Payments	78.00
Debts (Enter total from III Debts)	100.00
Miscellaneous Lessons for Heather	15.00
Miscellaneous	10.00
	983.50

BEST AVAILABLE COPY

H . Husband
W . Wife
J . Joint
C . Children

III. DEBTS

Creditor	Purpose	Original Amount	Balance	Monthly Payment
Wisconsin Finance	Car Loan	2,808.00	1,744.00	78.00
Spurgeons	Charge		178.39	20.00
~~Prudential Insurance~~	~~Loan (2)~~	~~253.14 & 889.36~~	~~Same~~	~~5.00 (Interest~~
Sauk Prairie Clinic	Med. Care/Tests	145.30	125.30	20.00
Sauk Prairie Hospital	" " "	100.00	100.00	10.00
~~Medical Associates~~	" " "	~~78.60~~	~~82.00~~	~~---~~
Baraboo Housing Auth.	House Improve.	2,000.00	2,000.00	No payments un house sold
Agnes Trussell	Loan	500.00	460.00	20.00
~~Dr. Grady~~	~~Braces~~	~~1,400.00~~	~~595.00~~	~~25.00~~

TOTAL 178.00

IV. ASSETS

A. REAL ESTATE If space is insufficient, attach separate schedule

Address	Appraised Value	Mortgage or Lien	Net Value
115 Ninth Avenue, Baraboo	43,250.00	30,450.00	12,800.00
(Owe 1983 taxes)			

B. MOTOR VEHICLES

Type	Present Value	Mortgage or Lien	Who Uses
1975 Hornet Wagon	500.00	1,744.00	Betty Krueger

C. CASH AND DEPOSIT ACCOUNTS

Bank or Savings & Loan	Type	Amount
Heather @ Baraboo National	Savings	13.78
Betty @ Baraboo National	Checking	40.00

D. LIFE INSURANCE

Company	Premiums	Face Amount	Beneficiaries	Type Policy	Cash Value
Prudential		2,000.00	Heather	20 year	---
	5.65	1,000.00	"	" "	"
		1,000.00	"	" "	Loan against it

2 Policies on Heather — Betty — - 0 -

E. RETIREMENT ANNUITIES OR PROFIT SHARING ACCOUNTS

$50.00 IRA

F. STOCKS & SECURITIES (List name, number of shares and value).

Household Finance - 2 shares - $40.00

G. OTHER ASSETS: (Include valuable collections such as coins, stamps, guns, sporting and other equipment, mortgages or notes receivable, interests in Trusts, wills, contract rights, judgments, livestock and pets)

None

H. HOUSEHOLD FURNITURE, FURNISHINGS & APPLIANCES — PRESENT VALUE 2,000.00

37a

Subscribed and sworn to before me this 13rd day of ~~January~~ March 1985.

Notary public, state of Wisconsin

My commission ~~expires~~ is permanent.

(Party's Signature)
Betty Krueger

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